

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs, June 24, 2009

**STATE OF TENNESSEE, DEPARTMENT OF CHILDREN'S SERVICES, v.
L.A.C.R., IN THE MATTER OF: JWC (DOB 08/23/91) and BLC (DOB
10/23/99), Children Under Eighteen (18) Years of Age**

**Direct Appeal from the Juvenile Court for Cumberland County
No. 08-JV-364 Hon. Larry M. Warner, Judge**

No. E2009-00390-COA-R3-PT - FILED JULY 30, 2009

The Trial Court terminated the mother's parental rights to her two minor children. The mother has appealed on the ground that the Trial Court erred in finding it was in the children's best interest to terminate her rights. We affirm.

Tenn. R. App. P.3 Appeal as of Right; Judgment of the Juvenile Court Affirmed.

HERSCHEL PICKENS FRANKS, P.J., delivered the opinion of the Court, in which CHARLES D. SUSANO, JR., J., and D. MICHAEL SWINEY, J., joined.

Kevin R. Bryant, Crossville, Tennessee, for appellant, L.A.C.R.

Robert E. Cooper, Jr., Attorney General and Reporter, Michael E. Moore, Solicitor General and Douglas Earl Dimond, Senior Counsel, Nashville, Tennessee, for appellee, Tennessee Department of Children's Services.

OPINION

On March 20, 2006, the State of Tennessee Department of Children's Services (DCS)

filed a petition to terminate the parental rights of the children's parents¹ to JWC and BLC.

The matter was heard on January 23, 2009, and on February 2, 2009 a Final Judgment was entered terminating the rights of both parents to the children. The Juvenile Court's Final Judgment found that DCS had made reasonable efforts to assist the parents in: (1) visiting the children; (2) establishing a suitable home for the children; (3) complying with the requirements in the permanency plans; and (4) remedying the conditions that necessitate foster care. The Juvenile Court found that DCS proved by clear and convincing evidence grounds for termination of parental rights and the Final Judgment included a finding that DCS proved by clear and convincing evidence that termination of the parental rights was in the best interest of the children, based upon the following findings of fact:

1. L.A.C.R. and L.W.C. have not made an adjustment of circumstances, conduct or conditions as to make it safe and in the children's best interest to be in the home of the parent.
2. The parents have failed to effect a lasting adjustment after reasonable efforts by available social agencies for such duration of time that lasting adjustment does not reasonably appear possible. The parents have been provided with various social services addressing drug issues, housing issues and parenting issues as the children have been in and out of custody for the last nine years.
3. The parents have not maintained regular visitation or other contact with the children.
4. A change of caretaker and physical environment is likely to have a negative effect on the children's emotional, psychological and/or medical conditions. The children are in a potential adoptive placement and have bonded with the foster parents. The children have improved considerably while in the foster home and the foster home has offered the children the most stability they have had in their entire lives.
5. The parents have not paid a reasonable portion of the children's care and maintenance when they were financially able to do so and consistent with Tenn. Code Ann. § 36-5-101.
6. The parents continue to make life style choices that prevent them from being able to parent the children or to provide a home for them.

¹L.W.C. did not make an appearance in the Trial Court, nor has he appealed the Final Judgment.

7. The foster mother testified to her love for the children and her and her husband's desire to adopt the children.
8. The children have developed a strong bond with the foster parents and desire to be adopted by them.
9. The mental health professional involved in the children's lives opined that termination of parental rights and adoption is in the children's best interests.
10. The children need to be released from the stigma of being foster children.
11. The children have been in the State's custody for more than nine years and the parents have been unable to establish a permanent, stable and safe home environment for their family. The children have spent more than five and a half years of their lives in DCS custody. They need to leave custody and have a permanent home and parents now.

L.A.C.R. has appealed from the final judgment to this Court.

On appeal, L.A.C.R. does not challenge the Trial Court's determination that DCS proved by clear and convincing evidence that termination of the parental rights were based on seven separate statutory grounds. As this is not an issue before us, it is unnecessary to address this issue. *Melton v. Melton*, No. M2001-00128-COA-R3-CV, 2004 WL 63437 at *3 (Tenn. Ct. App. Feb 22, 2004). Where an issue is not raised on appeal, it is conclusively waived. *See, Bing v. Baptist Memorial Hospital-Union City*, 937 S.W.2d 922, 924 (Tenn. Ct. App. 1996); *Schoen v. J.C. Bradford & Co.*, 642 S.W.2d 420 (Tenn. Ct. App. 1982).

L.A.C.R., to support her claim, argues that "best interest analysis is significantly lacking in light of the proof at trial", but to the contrary, the record overwhelmingly supports, by clear and convincing evidence, the Trial Court's holding that termination of L.A.C.R.'s parental rights was in the best interest of the children.

To make this finding, the Trial Court had to consider, but was not limited, to the statutory factors set forth in Tenn. Code Ann. § 36-1-113(I). The list of factors for the Trial Court's consideration is not exhaustive, nor is the Trial Court required to find the existence of each of the enumerated factors before reaching the conclusion that it was in the best interest of the children to terminate the parental rights. *In re M.A.R.* 183 S.W.3d 652, 667 (Tenn. Ct. App. 2005)(citing *See State v. T.S.W.*, No. M2001-01735-COA-R3-JV, 2002 WL 970434 at *3.

A review of the statutory factors and the evidence presented preponderate against L.A.C.R.'s contention. She did not make adjustments of circumstance, conduct or conditions to make a safe home for the children, despite the intervention of social services over the years. She manufactured drugs in the home, she encouraged her children to shop lift and her husband was

physically abusive to the children. The evidence establishes that social services provided much assistance to L.A.C.R. when she was not incarcerated, yet she spurned that assistance and in the four months before her last incarceration she would not allow DCS to know her whereabouts. She had not maintained regular visitation with the children in those four months between when the children were removed and her incarceration and saw the children only once during that time frame.

DCS attempted to maintain visitation during her incarceration, but she behaved inappropriately during the visits and they were discontinued.

L.A.C.R. has at least seven years of incarceration in front of her, so it is unlikely the children could actually be under her care any time soon. Moreover, the older child stated he would run away if he were returned to his mother. The testimony was that both children had flourished and improved since living with the foster parents, who love and want to adopt the children. Further, the evidence established that the boys were subjected to physical abuse by their mother's husband while they lived with their mother, and the mother was convicted for the manufacture of methamphetamine and did so while the children were in the home, which demonstrates clearly that the environment when the children were living with their mother was both unsafe and they were exposed to criminal activity.

We conclude the Trial Court did not err when he found that termination of L.A.C.R.'s parental rights to the children was clearly and convincingly in the best interest of the children.

We affirm the Judgment of the Trial Court and remand, with the cost of the appeal assessed to L.A.C.R. (aka L.A.S.C.W.R.)

HERSCHEL PICKENS FRANKS, P.J.